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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 PAUL BENSI, BART FLORENCE, JERRY
KALMAR, and LYLE SETTER, in their
13 capacities as Trustees of the STATIONARY
ENGINEERS LOCAL 39 PENSION TRUST
14 FUND; STATIONARY ENGINEERS LOCAL
39 HEALTH AND WELFARE TRUST FUND;
15 and STATIONARY ENGINEERS LOCAL 39
ANNUITY TRUST FUND,

16
17 Plaintiffs,

18 v.

19 RICHARD THOMAS BROWN, JR.,
20 Individually; RICHARD THOMAS BROWN,
JR., Individually and doing business as
21 MOONLITE ELECTRIC; MOONLITE
ELECTRIC, a Sole Proprietorship;
22 MOONLITE ELECTRIC INC., a California
23 Corporation,

24 Defendants.

No. C 11-03944 EDL

**STIPULATION FOR ENTRY OF
JUDGMENT; ~~PROPOSED~~ ORDER
AND JUDGMENT**

The Parties hereto hereby stipulate and agree as follows:

1. Plaintiffs PAUL BENSI, BART FLORENCE, JERRY KALMAR, and LYLE SETTER, in their capacities as Trustees of the STATIONARY ENGINEERS LOCAL 39 PENSION TRUST FUND; STATIONARY ENGINEERS LOCAL 39 HEALTH AND WELFARE TRUST FUND; and STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND (“Trust Funds” or “Plaintiffs”), brought the above-captioned action against Defendants RICHARD THOMAS BROWN, JR., Individually; RICHARD THOMAS BROWN, JR., Individually and doing business as MOONLITE ELECTRIC; MOONLITE ELECTRIC, a Sole Proprietorship; MOONLITE ELECTRIC INC., a California Corporation, (“Moonlite Electric” or “Defendants”). Plaintiffs, in this action, sought payment of delinquent fringe benefit contributions, liquidated damages, interest and testing fees revealed in a payroll compliance testing audit of Defendants’ books and records for the period January 1, 2005 through December 31, 2008 (“payroll compliance testing”). Plaintiffs are also seeking attorneys’ fees and other reasonable costs incurred in connection with this action.

2. The parties reached a settlement of this action at the December 17, 2012 mediation before Mediator Robert S. Luft, Esq. (“Settlement”).

3. The parties hereby stipulate and agree to settle this action under the following terms:

4. Defendants agree to have judgment entered against them as follows:

- a. Judgment shall be entered against Defendants in the amount of \$20,000.00.
- b. Defendants agree to pay the \$20,000.00 in forty (40) equal monthly payments of \$500.00. The first monthly installment payment is due on or before February 1, 2013. Thereafter, all payments shall be due on or before the 1st day of the month in which it is due. By way of example, the second payment is due on or before March 1, 2013. Defendants’ payment schedule is attached hereto as Exhibit A, and incorporated herein by reference.
- c. If Defendants fail to make a payment as set forth in Paragraphs 4(b) or fail to comply with any other material condition herein, the Defendants will be in

1 default of this Stipulation for Entry of Judgment. Plaintiffs will notify
2 Defendants of the default and the Defendants shall have ten (10) days from the
3 date of the notice to cure the default. The Trust Funds will provide notice of
4 default as set forth in Paragraph 6 below.

5 5. Defendants shall remit the payments as described in Paragraph 4 above, and made
6 payable to the STATIONARY ENGINEERS LOCAL 39 TRUST FUNDS, to the Trust Funds'
7 offices at:

8 Stationary Engineers Local 39 Trust Funds
9 c/o BeneSys Administrators
10 P.O. Box 4286
Hayward, CA 94540-4286

11 With a copy of the payment mailed to the Trust Funds' counsel at:

12 Linda Baldwin Jones, Esq.
13 WEINBERG, ROGER & ROSENFELD, P.C.
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

14 6. Plaintiffs shall submit written notices to Defendants, as specified in Paragraph 4c,
15 to the following individual:

16 Richard T. Brown
17 Moonlite Electric
339 Parker Avenue #14
18 Rodeo, CA 94572

19 With a copy to Defendants' counsel at:

20 Richard Hill, Esq.
21 LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, CA 94108

22 7. If the terms of the Stipulation for Entry of Judgment are litigated for any reason,
23 the prevailing party is entitled to their attorneys' fees and costs incurred in bringing such
24 litigation.

25 8. In consideration of the mutual promises herein and the consideration set forth
26 above, the Trust Funds, on behalf of themselves, their respective current or former officers,
27 trustees, employees, agents, directors, subsidiaries, parent companies, predecessors, successors,
28 representatives and assigns hereby release, waive and forever discharge the Defendants and its

1 respective current or former officers, employees, agents, directors, attorneys, predecessors,
 2 successors, representatives and assigns (collectively the “Releasees”) from any and all claims,
 3 rights, demands, liabilities, causes of action, damages, losses, costs or expenses (including
 4 attorneys’ fees and testing fees) of any kind whatsoever, known or unknown, suspected or
 5 unsuspected, that the Trust Funds may now have or ever had against any of the Releasees at any
 6 time up to the date of the termination of the collective bargaining agreement between Stationary
 7 Engineers Local 39 and Defendants on February 17, 2013. This includes, but is not limited to, all
 8 of the claims for relief asserted in the Action.

9 9. In consideration of the mutual promises herein and the consideration set forth
 10 above, the Defendants, on behalf of themselves, their current or former officers, employees,
 11 agents, directors, attorneys, predecessors, successors, representatives and assigns hereby release,
 12 waive and forever discharge the Trust Funds and their respective current or former officers,
 13 employees, agents, trustees, directors, attorneys, predecessors, successors, representatives and
 14 assigns (collectively the “Releasees”) from any and all claims, rights, demands, liabilities, causes
 15 of action, damages, losses, costs or expenses (including attorneys’ fees) of any kind whatsoever,
 16 known or unknown, suspected or unsuspected, that the Defendants may now have or ever had
 17 against any of the Releasees at any time up to the date of the termination of the collective
 18 bargaining agreement between Stationary Engineers Local 39 and Defendants on February 17,
 19 2013. This includes, but is not limited to, all of the claims for relief asserted in the Action.

20 10. The Trust Funds and Defendants expressly waive all rights and benefits, if any,
 21 afforded by Section 1542 of the California Civil Code, or any analogous state law, federal law or
 22 regulation, and understand and acknowledge the significance and consequences of this waiver.
 23 Section 1542 provides as follows:

24 A general release does not extend to claims which the creditor does
 25 not know or suspect to exist in his or her favor at the time of
 26 executing the release, which if known by him or her must have
 materially affected his or her settlement with the debtor.

27 11. Plaintiffs stipulate that if they take any action to secure the stipulated judgment,
 28 Plaintiffs agree to remove all liens once the payments have been made and pay all costs
 associated with removing said liens.

12. Defendants further stipulate and agree that if Moonlite Electric, Inc. or Moonlite Electric, a sole proprietorship, are sold, this Stipulation for Entry of Judgment shall be binding on their successors, heirs, and assigns regardless of whether they change the name or style or address of the business.

13. The provisions set forth in this Stipulation for Entry of Judgment are not in violation of any state or federal law. However, if any portion of said stipulation is found to be in violation of any state or federal law, then Defendants shall continue to pay the indebtedness outlined herein under Paragraph 4.

14. Plaintiffs and Defendants acknowledge to each other that they have had an opportunity to be represented by independent legal counsel of their own choice throughout all of the negotiations that preceded the execution of this Stipulation for Entry of Judgment. Plaintiffs and Defendants further acknowledge that they have had adequate opportunity to perform whatever investigation or inquiry they may deem necessary in connection with the subject matter of this Stipulation for Entry of Judgment prior to its execution, and agree with the delivery and acceptance of the considerations specified in this Stipulation for Entry of Judgment.

15. This Stipulation may be executed in counterpart, and each counterpart shall be deemed a duplicate original and the same agreement.

16. The parties hereto mutually state that they have read the foregoing Stipulation for Entry of Judgment and are fully aware of its contents and legal facts. This Stipulation for Entry of Judgment constitutes the entire agreement of the parties and is entered into on the dates below indicated.

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17. The parties further stipulate and agree that the Court shall retain jurisdiction over the Settlement Agreement between the parties executed at the Mediation on December 17, 2012, and attached hereto as Exhibit B, and incorporated herein by reference.

Dated: February 11, 2013

STATIONARY ENGINEERS LOCAL 39
PENSION TRUST FUND; STATIONARY
ENGINEERS LOCAL 39 HEALTH AND
WELFARE TRUST FUND; and STATIONARY
ENGINEERS LOCAL 39 ANNUITY TRUST
FUND

By: /s/ Bart Florence
BART FLORENCE, Trustee

Dated: February 11, 2013

RICHARD THOMAS BROWN, JR.,
INDIVIDUALLY AND ON BEHALF OF
MOONLITE ELECTRIC, A SOLE
PROPRIETORSHIP

By: /s/ Richard Thomas Brown
RICHARD THOMAS BROWN, JR.,
Individually and behalf of Moonlite Electric, a
Sole Proprietorship

Dated: February 11, 2013

MOONLITE ELECTRIC, INC., A CALIFORNIA
CORPORATION

By: /s/ Richard Thomas Brown
RICHARD THOMAS BROWN, JR.

APPROVED AS TO FORM AND CONTENT:

Dated: February 13, 2013

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ Linda Baldwin Jones
LINDA BALDWIN JONES
EZEKIEL D. CARDER
Attorneys for Plaintiffs

1 Dated: February 11, 2013

LITTLER MENDELSON, P.C.

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3 By: /s/ Richard N. Hill
4 RICHARD N. HILL
5 Attorneys for Defendants
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~~PROPOSED~~ ORDER AND JUDGMENT

It is so ordered that Judgment is entered against Defendants RICHARD THOMAS BROWN, JR., Individually; RICHARD THOMAS BROWN, JR., Individually and doing business as MOONLITE ELECTRIC; MOONLITE ELECTRIC, a Sole Proprietorship; MOONLITE ELECTRIC INC., a California Corporation, as set forth in the Stipulation for Entry of Judgment. Moreover, the Court will retain jurisdiction over this case and the Settlement Agreement between the Plaintiffs and Defendants until June 1, 2016. ~~In addition, the Court orders:~~

Dated: February 15, 2013


HONORABLE ELIZABETH D. LAPORTE
UNITED STATES MAGISTRATE JUDGE

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